

Motion

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1 MR. LONDA: Raymond Londa.

2 THE COURT: It is your motion.

3 MR. LONDA: Yes. The brief has fully presented
4 arguments, but there are a few things I would like to point out
5 to the Court.

6 It was set forth in my reply, that I actually made an
7 error in my initial brief. In the amended complaint by the
8 plaintiff there were really only two allegations against the
9 individual police officers. They were the use of excessive
10 force in Count Two, and Count Five, common law malicious
11 prosecution. I addressed in my initial brief also Count Three,
12 which was the invasion of privacy. There were allegations that
13 Miss Williams was left in a state of undress in the cell in
14 which she was held, and that actually the complaint is only
15 alleged against the City. So, in essence, we really come
16 before you on summary judgment on just the two counts:
17 Excessive use of force and common law malicious prosecution.

18 THE COURT: Why not on the other one?

19 MR. LONDA: Because in the wherever, or the wherever
20 demand for damages, it strictly names the City of Elizabeth,
21 which is the third defendant in this matter.

22 THE COURT: Do they appear on this motion?

23 MR. LONDA: No, they're not.

24 THE COURT: As far as the City of Elizabeth is
25 concerned, there's no application for relief?

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1 MR. LONDA: They have not -- the City didn't join in
2 the motion, did they?

3 MR. ANTONELLI: Correct.

4 MR. LONDA: No one. The City did not join in this
5 motion.

6 THE COURT: All right. A factual question maybe
7 created by the evidence from the plaintiff that she was hit
8 excessively by the police officers.

9 MR. LONDA: And I would like to address that, your
10 Honor.

11 THE COURT: I'm wondering if that creates a factual
12 issue.

13 MR. LONDA: I would say, in most of the cases that we
14 handle on behalf of police officers where there is an
15 allegation of excessive use of force, that is certainly a
16 concern that we have. But this is one of the fortuitous cases,
17 that we have two independent eye witnesses who have no
18 connection with the City, whatsoever, and have corroborated the
19 version of what happened in the two minutes that it took for
20 the police to get control over the plaintiff. They confirmed
21 what the police said, that first of all, what we know is that
22 Miss Williams had an excessive amount of alcohol. She had been
23 prescribed 25 milligrams of Seroquel, but had taken 300. She
24 was found lying in the hallway of the apartment in a state of
25 either deep sleep or unconsciousness. The Karps, who tried to

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1 get into their apartment because she was before them, were the
2 ones who called the police and they observed what happened.
3 They corroborate completely what the police did. They
4 attempted to verbally arouse her, shake her hand, shake her
5 foot to arouse her, and when she finally did wake up. She woke
6 up flailing, and kicking, and stumbling, and ranting and
7 raging. And in accordance with the testimony that was at the
8 deposition of Joshua Karp, was that the police did nothing but
9 to attempt to restrain this woman who was completely out of
10 control. That's exactly what the police say, your Honor.

11 And also the plaintiff makes certain admissions, one
12 of which was that she claims that she was being hit. The Karpes
13 say that the police were doing nothing but attempting to
14 control her as she was striking them, and certainly police
15 officers under these circumstances, a reasonable police officer
16 under these circumstances knows that he is entitled to use
17 force to overcome the force of the plaintiff in this matter,
18 your Honor, and the use of force is what qualified immunity is
19 all about. We are not talking about a long-term assault on
20 this woman, we are talking about what she claims to be a two
21 minutes in which she claims she was hit without provocation;
22 where we have two independent eye witnesses who said that the
23 police did nothing but attempt to control her.

24 I would submit to your Honor that if ever there was a
25 case for qualified immunity, these are the facts, because if

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1 police cannot respond in this manner to someone who is
2 obviously impaired by alcohol, impaired by drugs, then when
3 could they ever respond?

4 The Karpis have indicated that once they got her under
5 control, that was when it stopped. She continued to resist,
6 and they even, if your Honor remembers, they even went to their
7 apartment windows to watch as the officers took her downstairs
8 to put her in the police car, that she was continuing to kick,
9 continuing to drag, and they just lifted her up and put her in
10 the car. There's no allegation that they continued to beat
11 her.

12 This is not a police brutality case, your Honor, as
13 much as they would like to say that. It simply is not. But
14 for these two independent witnesses, we'd have a question of
15 fact. When you have two witnesses who have nothing to gain and
16 no interest in this case, who corroborate the police, I submit
17 to you that an attempt to create a question of fact under these
18 circumstances simply must fail.

19 All right.

20 THE COURT: I wanted to know that you have more that
21 you had --

22 MR. LONDA: I would like to address the other issue
23 against the police is malicious prosecution. Once again, what
24 you do have, you have police who filed the complaints that
25 there was an assault on the police officer, which the witnesses

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1 say there was. She was kicking at them, she was flailing in a
2 Windmill fashion, striking the police officer. That's assault
3 on a police officer and disorderly person. And certainly
4 having this behavior in an apartment building is a disorderly
5 person. The fact that it was not tried because the police
6 officers were not noticed and therefore didn't appear, the case
7 was dismissed. But that does not prove lack of probable cause,
8 and probable cause is the ultimate defense to this. And, once
9 again, we have independent witnesses who proved there was
10 probable cause to arrest and to make the charges.

11 So, your Honor, I submit to you that this is the
12 perfect case for qualified immunity. Our officers --

13 THE COURT: Do you even get -- if your theory is
14 correct, you don't get to qualified immunity. Just the facts,
15 themselves, according to you, would not be the basis for the
16 complaint. The qualified immunity and the facts and the merits
17 of the case overlap.

18 MR. LONDA: I'm sorry?

19 THE COURT: I'm just saying -- what if what you say is
20 correct, there is no basis for qualified immunity because you
21 don't get to that question because you've already dismissed the
22 case?

23 MR. LONDA: Well, for the malicious prosecution, that
24 requires probable cause, and they certainly have probable cause
25 to file the complaints. The issue of qualified immunity comes

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1 to how much on force was used, because clearly there was a need
2 for force. But, again, as the courts have claimed, the issue
3 of how much force could be used is not something that you can
4 look back in 20/20 hindsight. It's not something that you
5 determine: Well, it sounds that it might have been excessive
6 in the quiet camp a courtroom. These are police officers
7 making their decisions in the split second tumult of this woman
8 acting, as one of the officers described her, as a maniac. And
9 the trusting aspect of this, your Honor, even more so to prove
10 that the police officers were correct in their assessment and
11 behavior, is that this is a woman who acknowledged that she
12 suffers from manic depression, that she suffers from
13 nightmares, that she periodically had nightmares of people
14 coming into her home and demanding or frightening her, and that
15 she would wake up in her own home and on her own couch; that
16 she was kicking and thrashing.

17 Now, what do you have? A person in a middle of her
18 nightmare. She was in a hallway, she doesn't know how she got
19 there. She's in a hallway, and here are people -- she thinks
20 she's in bed, and they are coming toward her, and they are
21 telling her she has to move, and there is a nightmare, and she
22 starts kicking, and flailing, and punching. Punch is not
23 correct. And I do want to be very factual with your Honor.
24 She was flailing her arms and striking the officers. I think
25 that's where the qualified immunity is, how much force is

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1 required to overcome force. You have a stale mate. The courts
2 don't require excessive force because then you have, you just
3 have the stale mate. The police officers are entitled to use
4 whatever level of force is reasonable for a police officer in
5 the tumult of that moment to decide if it's necessary. And,
6 the whole thing took two minutes, according to the plaintiff.

7 THE COURT: All right. Anything else?

8 MR. LONDA: No, sir. But if your Honor does want to
9 address the issue of the privacy, I would like to point out one
10 thing. The plaintiff made a very big argument saying that the
11 internal affairs investigation, saying that the police officer
12 should have been sure that she was covered when they brought
13 her in the cell block. That was the end of the responsibility
14 for her. They brought her into the cell block. But the one
15 piece of information that the internal affairs did not have at
16 the time is an admission that the plaintiff had made in this
17 case, that when she arrived at the police station she saw
18 herself and she was wearing a jacket. Now, both of the police
19 officers have said that she was wearing clothing that had come
20 askew. It was a little torn from the scuffle. She was
21 dressed, and she was not exposed when they brought her there,
22 and therefore they turned her over to be dealt with when they
23 went to write their reports. It was not their responsibility
24 at that point to deal with her state of dress.

25 And incidentally, one of the issues, of course, that

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1 the Sergeant Ospotta who wrote that conclusion, also said that
2 Officer Rivera had stated that she did give the plaintiff --
3 they give them a plastic shirt type clothing that they have at
4 the police station, and that Miss Williams refused to wear it.

5 THE COURT: All right. Thank you, very much.

6 MR. LONDA: Thank you, your Honor.

7 THE COURT: All right.

8 MR. SHELTON: I would ask you to allow me to respond
9 after the other officers. Our arguments are the same with
10 regard to both officers, otherwise I'd have to make it twice.

11 THE COURT: All right.

12 MR. ANTONELLI: Thank you, Judge. Good afternoon --
13 or good morning. My name is Danielle Antonelli on behalf of
14 defendant Johanna Rivera, the other officer charged in this
15 case.

16 Judge, I will try not to be repetitive and rely on Mr.
17 Londa's argument which would apply in equal force to Mr.
18 Rivera.

19 There are a couple points I would like to highlight.
20 As we all know, you're duty bound to look at the facts in the
21 light most favorably to the plaintiff. You're also duty bound
22 to look at the facts not through 20/20 hindsight, but through
23 the eyes of a reasonable officer. At the point in time -- it's
24 easy and nice here in your Honor's courtroom to judge whether
25 or not certain things should have been done. We're talking

1 about lasting only two minutes. We have the Karps, and in
2 particular Mr. Karp and his testimony at one point, Judge,
3 during the ensuing struggle, Mr. and Mrs. Karp removed
4 themselves from the hallway. And that's because they were
5 concerned for their own safety as to what was taking place.

6 What we have here, Judge, is an incident that lasted
7 two minutes. We cited to actually two cases. First, in my
8 moving brief as well as in my reply brief, we cited two cases
9 to point out that, yes, Judge, there was some force here.
10 There was some force, a reasonable amount of force, to overcome
11 Miss Williams' resistance. And, Judge, what we have here is
12 after attempts were made to try to awake Miss Williams, Mr.
13 Karp testified that she jumped up, and that's when the
14 altercation took place.

15 We also know, Judge, and what's undisputed, is once
16 Miss Williams was handcuffed, there is no allegation that any
17 force was used after the handcuffs were in place because we all
18 know that that was a violation of Miss Williams' constitutional
19 rights. We also know too that there was no chemical agent used
20 like OC spray. There was no other weapon used. A canine was
21 not used, or a service revolver was not used. And the only
22 thing that was used, that was completed by Rivera, was fist and
23 hands. And I would submit, Judge, in order to subdued someone
24 who's flailing and kicking their arms, hands and fists maybe
25 used to overcome that resistance.

1 But, Judge, what is interesting, and I think what is
2 most telling about this case, as Mr. Londa pointed out, we do
3 have the Karps' independent testimony, which is actually
4 consistent with the plaintiffs' version of events. Miss
5 Williams doesn't know how she got to the fifth floor of this
6 apartment building. The last thing she recalls is being in her
7 apartment. And, Judge, I quote in my reply pages her
8 testimony, and I think it's important for your Honor's ruling
9 and coming to a conclusion, she testifies: Now I'm confused,
10 I'm totally disoriented. And this is at page 4 of my reply
11 brief. Totally at this point, now, I thought I was in my bed,
12 and someone is picking me up. There is a woman standing in
13 front of me. I don't know what's going on. There is someone
14 in front of me. What did I do to get you to come here? Why
15 are you here? I didn't remember leaving my apartment. Why are
16 you here?

17 Judge, the plaintiff thought that the officers were in
18 her apartment and wanted something from her, and she's
19 confused. She doesn't know why. If you or I, or anyone else,
20 thinks someone's in your bedroom, or in your apartment, or in
21 your house, and you don't know why, you're disoriented, you
22 fight back, you resist, you flail your arms, and you flail your
23 legs. That's what she did, your Honor. She tried to get away
24 from people that she thought wanted something from her. That's
25 important, Judge, because I think it goes to the credibility of

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1 Mr. Karp in his testimony. And, again, that would explain what
2 Mr. Karp saw. He saw at some point the plaintiff run back to
3 her apartment door and back to the door attempting to try to
4 get in. At this point she realizes she's not in her apartment
5 and trying to get back into her apartment, it's the Karps'
6 apartment door she was trying to get into.

7 Judge, we think that this case is a case that
8 qualifies -- cries out for qualified immunity, and we would ask
9 your Honor to grant our motion based upon that.

10 THE COURT: Thank you, very much.

11 Mr. Shelton.

12 MR. SHELTON: Good afternoon, your Honor.

13 THE COURT: Good afternoon.

14 MR. SHELTON: I think he meant to say it's still
15 morning. It's 11:30. Good morning.

16 Your Honor, qualified immunity --

17 THE COURT: Well, do you get to qualified immunity?
18 Don't the facts show that the police were perfectly justified
19 in doing what they did and had to do it?

20 MR. SHELTON: No, it doesn't. It doesn't because the
21 arguments that they presented don't present any of the facts
22 that get the police to the point where they should not have
23 been, which is in a confrontation. Mrs. Williams is a female
24 who is partially unclothed without shoes in a hallway. The
25 police do not respond to a situation where they believe a crime

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1 is being committed. When they see Mrs. Williams, they don't
2 suspect that there's a crime being committed. The way that
3 they handled Mrs. Williams in the totality of the circumstances
4 was unreasonable, and we must consider unreasonableness, or the
5 reasonable officer in that situation, in determining whether or
6 not there was any cause for them to do what they did, or
7 whether or not they're entitled to the qualified immunity.

8 Both officers admit that they never considered that
9 she may have been a victim of a crime.

10 THE COURT: Well, she wasn't.

11 MR. SHELTON: It doesn't matter. The reasonable
12 officer coming up on a woman partially clothed does not
13 consider that the woman has committed a crime. And once they
14 had tried to arouse her, the officers, and I've briefed this,
15 they indicate that they drop her hands several times. No
16 response. At that point those officers had a duty to summon
17 EMS. They didn't. They continued to treat this woman in an
18 unreasonable fashion. It is the Karps who I believe both
19 counsel respectively had mischaracterized what the Karps have
20 said in their testimony.

21 They began by giving the woman a sternum rub. Now,
22 there's no doubt, and it's undisputed based on each of the
23 witnesses, that this woman was naked at the top. Mr. Karp, at
24 this juncture, you have to take the evidence as it appears,
25 doesn't want to say whether it was the male or female officer

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1 that gave the sternum rub. But we do know that a sternum rub
2 was given to the naked woman's chest. At that point what Mr.
3 Karp said, he was not supportive of the officers' testimony,
4 and if you recall, the officers' testimony was once that she
5 became aware or conscious from the floor, she began to kick and
6 punch.

7 Officer Dorilus his indicated that he was kicked at
8 least twice in the groin while she was laying on the floor.
9 There is nothing in the testimony of either Karp which supports
10 that. What the Karps do say is that she jumped up and appeared
11 to be a person who had no control over her function. They also
12 described what she did as a baby temper tantrum. I think we
13 all, as reasonable people, know that if a person is having a
14 baby temper tantrum, you don't beat them down. Babies having a
15 temper tantrum, it's very easy to control.

16 THE COURT: But she wasn't a baby.

17 MR. SHELTON: No, she wasn't. But if she was having a
18 baby temper tantrum, she wasn't --

19 THE COURT: If a baby grows up and as an adult has a
20 baby tantrum, this baby has grown up.

21 MR. SHELTON: I don't disagree. Those actions are not
22 actions that one would consider as being directed towards the
23 officer to cause any injuries to the officer.

24 Now, what I heard from the arguments of counsel, and
25 one thing stood out is that she tried to get away. Well, if a

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1 person is trying to get away, and they're not under arrest,
2 there's no resisting arrest. None of the testimony of the
3 Karpis indicates that she was under arrest. They never heard
4 the officers identify themselves as officers. They did not put
5 the handcuffs on her. And at the time that she allegedly ran
6 back down the hall, she was not handcuffed.

7 THE COURT: But she was out of control.

8 MR. SHELTON: I don't know that she was out of
9 control. We don't believe that she was out of control. We
10 believe that she was absolutely within her rights at the time
11 because the officers had handled her in an unreasonable
12 fashion. Specifically I think when you go to the issue about
13 qualified -- let's go back to the malicious prosecution first.
14 If she was not under arrest, breaking away and going back to
15 the door would not have been resisting arrest. The Karpis
16 specifically say that she was not under arrest, and nor was she
17 held by either officer. So we don't have a situation where the
18 officers have her handcuffed, and have their hands on her under
19 control. They're walking down the hallway, according to the
20 Karpis, at which she turns around, tries knocking and getting
21 into the door.

22 You also don't have one of the other elements of
23 disorderly, which is you're causing some kind of ruckus that
24 is -- that serves no reasonable purpose. No one in the
25 building, heard it or came to their door. And specifically one

1 of the things I think the one of the people that were home that
2 night that were interviewed by Sergeant Ospotta, who indicated
3 if someone yelled in the hallway, we absolutely would have
4 heard it, come to see. We were there and heard nothing.

5 So all of the things that the defense are arguing are
6 in dispute. And at this stage, which is summary judgment,
7 you're not entitled to anything in their favor. It's the
8 plaintiff, or the non-moving party who is entitled to have the
9 facts viewed in a light most favorable to them.

10 And in the case of the qualified immunity, the Court
11 has to decide whether the officers' conduct violated a clearly
12 established constitutional right that plaintiff had. Or
13 whether or not -- well, the Court must also consider, rather,
14 whether or not any of the facts that surround that -- the
15 actions of the officers are disputed. That is, the historical
16 facts material to what the officers did, have to be objectively
17 looked at to determine whether or not their actions were
18 reasonable. That gives rise to a jury question. And here, all
19 of the historical facts are in dispute. One that is not in
20 dispute, that she was in some state of disarray or not dressed,
21 that she was unconscious or unresponsive. There is no
22 allegations by either officer that there was any conscious or
23 detectable odor of alcohol. These are all facts that they're
24 coming with, that they're saying: Oh, after the fact we found
25 out.

1 The officer at the scene is the one whose actions
2 we're questioning. At the scene, none of the issues that I've
3 just discussed, including that she may have been a victim, or
4 that there was some illegal activity going on, or that she was
5 engaged in something that they had to stop when they came upon
6 her. Those historical facts are all in dispute. And the --
7 the testimony of the Karps in no way supports the rendition of
8 the facts given by both officers. Both officers describe an
9 incident where the woman is kicking and punching from the
10 floor. Mr. Karp specifically says: I didn't see a fist. If
11 I'd seen a fist, I would have said punching.

12 And we brought the Court's attention to that, and that
13 would be found in Exhibit A, 4917 through 19. He also
14 describes that all of her actions were clearly uncoordinated.
15 So the officers were never in any danger. They weren't
16 escalating violence to another level to subdue this woman. As
17 a matter of fact, Mr. Karp specifically says at some point when
18 she was flailing, the male officer grabbed her, subdued her,
19 and pinned her on the wall. Now, historically the plaintiff
20 says that she was grabbed by the hands and pinned on the wall,
21 at which time the female officer began to pummel her. There's
22 no doubt that the Karps have seen something that supports not
23 only the plaintiff's story but does not support the defendants'
24 story.

25 So in light most favorable to the plaintiff at this

1 stage, how can you decide? All these historical facts are in
2 dispute. And any fair -- I have to stress, Judge, any fair
3 reading of the Karps' testimony, no one would say fairly that
4 the Karps' rendition of what happened in that hallway supports
5 anything that the officers said happened in that hallway. It's
6 completely the opposite, actually.

7 One of the other disputed issues is whether or not
8 there was probable cause for an arrest for disorderly conduct.
9 What was the disorderly conduct? That's in dispute. Whether
10 or not she had the capacity to assault or resist arrest, and
11 whether or not there really was a confrontation. The Karps
12 don't -- they don't describe a confrontation so much as they
13 describe a person who was shocked of consciousness, and who was
14 disoriented. And in those cases when the officer is not in any
15 danger of immediate bodily harm, they actually were
16 unreasonable in their response. To hold that woman and to beat
17 her down, breaking her eye socket, causing her ear to bleed,
18 pummeling her about her head, stepping on her foot and leaving
19 a footprint on the naked foot, those are things you would
20 expect for an officer who did not have respect for a rights of
21 a person. And at this stage it is inappropriate, I believe, to
22 grant summary judgment.

23 I don't believe I need to address the issue of
24 invasion of privacy, unless your Honor has a question.

25 THE COURT: No, I have the full account in the briefs.

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1 MR. SHELTON: Yes.

2 THE COURT: All right. Any reply?

3 MR. SHELTON: Thank you, your Honor.

4 THE COURT: Any reply?

5 MR. LONDA: I will, your Honor.

6 Mr. Shelton references injuries. There was no
7 permanency. There were no substantial injuries. I have to
8 admit to being a little flabbergasted at his characterization
9 of the testimony which has been presented in the brief, and you
10 can read that for yourself. Clearly they didn't say that she
11 was just having a baby temper tantrum. They said she was
12 windmilling, flailing, and kicking, and striking the officers.
13 Like a baby having a temper tantrum, which was a physical
14 violent reaction by this woman. And it sounds as if Mr.
15 Shelton's argument is that if you are drunk and under the
16 influence of massive amounts of medication, you can't
17 conscientiously intend to assault a police officer, and
18 therefore the police officer can't be in danger. And I would
19 suggest that that simply makes no sense. I can't imagine that
20 anyone, given the testimony read from Mr. Karp, should suggest
21 that there was no disorderly conduct by this plaintiff, and
22 therefore it's malicious prosecution.

23 There is a complete lack of acknowledgement of what
24 happened, even as stated by his own client. To get this woman
25 under control, who was completely out of control, and the fact

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1 that the officers did not cause her more injuries, was a
2 testament to their ability not to lose control. I'm sure your
3 Honor has read the briefs, you've read the Karps' testimony,
4 and you've heard what they had to say. I submit to you, your
5 Honor, that this is the perfect case where you can rule without
6 any question of fact that these officers conducted themselves
7 in an appropriately, objectively reasonable matter under the
8 circumstances as they occurred at that time.

9 And to argue that maybe they should have thought that
10 something had happened -- and, by the way, in terms of alcohol,
11 Mr. Karp, and I believe it's in my brief, said that they were
12 five or six feet away from her, and they can smell the alcohol.
13 There's never been a question of the alcohol intake. She
14 acknowledges two glasses of wine, 300 milligrams of Seroquel
15 and two rum and Cokes. And later she said she didn't finish
16 the second one, all within a fairly short period of time, not
17 having eaten for two days. Again, your Honor, this must be
18 seen from the vantage of those officers suddenly accosted by
19 this woman, completely out of control and physically violent,
20 and it is just not to say that -- well, maybe they could have
21 done something else. And I submit, your Honor, that they're
22 entitled to summary judgment, and I thank you very much for
23 your time.

24 THE COURT: Thank you very much.

25 MR. ANTONELLI: If I may briefly?

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1 Judge, if I may, your Honor, with all due respect, Mr.
2 Shelton is doing exactly what the case law frowns upon, that is
3 judging the actions of my client and Officer Dorilus in 20/20
4 hindsight.

5 Judge, what we have here is evidence before this Court
6 that the plaintiff was flailing her arms. This is not the
7 testimony of Officer Rivera, nor is it of Officer Dorilus.
8 This is the testimony of Mr. Karp.

9 On the issue of whether or not the officers were in
10 harm's way, so to speak, the case law talks about not only
11 safety to the other, Mr. and Mrs. Karp retreated to the
12 stairwell to remove themselves from the incident.

13 And, Judge, I know we're talking about qualified
14 immunity, but for a right to be clearly established, Miss
15 Rivera would have had to have known that her conduct on the day
16 in question was unlawful. And I would submit, Judge, using her
17 hands, her fist and no other weapons of any kind in order to
18 combat someone who is clearly in a situation where she is
19 flailing her arms, does not rise to the level of excessive
20 force in the first instance, which I think your Honor has
21 pointed out. And secondly, I think you assume, for purposes of
22 this motion, whether or not that right was clearly established.
23 I ask for those witnesses and reasons previously stated, to
24 grant our motion.

25 THE COURT: All right. I'll reserve decision and let

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1 you know.

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